

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. 18 CR 450
)	
DAVID WALSH,)	Chicago, Illinois
)	January 14, 2021
Defendant.)	10:30 a.m.

TRANSCRIPT OF VIDEOGRAPHIC PROCEEDINGS - Sentencing
BEFORE THE HONORABLE GARY FEINERMAN

APPEARANCES:

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Also Present: MR. JASON CHRISTIANSEN, U.S. Probation.
(via video conference call)

Court Reporter:

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1 (Proceedings heard in open court:)

2 THE COURT: Good morning, Jackie.

3 THE CLERK: Good morning, Judge. Today's date is
4 January 14th, 2021, Judge Gary Feinerman presiding.

5 18 CR 450, USA versus David Walsh.

6 THE COURT: Who do we have for the government?

7 MR. VEATCH: Good morning, your Honor. Christopher
8 Veatch on behalf of the United States.

9 THE COURT: And defense counsel?

10 MR. BOYLE: Good morning, Judge. Patrick Boyle on
11 behalf of Mr. David Walsh, who's joining us via video from
12 the MCC in custody.

13 THE COURT: Okay. And we had a CARES Act order
14 entered yesterday, I believe.

15 MR. BOYLE: Yes, your Honor.

16 THE COURT: And do we have the Probation Office on
17 the line?

18 MR. CHRISTIANSEN: Yes, Judge. Good morning. This
19 is Jason Christiansen with the U.S. Probation Office. Please
20 forgive me. I'm having some real connectivity issues. That's
21 why I called in.

22 THE COURT: That's fine. I actually see you on video
23 right now, too.

24 We're here for the continuation of the sentencing
25 hearing. What I was planning on doing is this; and if you

1 think things ought to proceed in a different way, please let
2 me know, and I'll consider your suggestion. I was -- the
3 first part, I was going to complete the sentencing as I had
4 intended to complete it before Mr. Walsh's --

5 THE DEFENDANT: Rant.

6 THE COURT: -- for lack of a better word,
7 supplemental allocution. And in that, I was also going to
8 take into account the revision to the PSR and Mr. Walsh's
9 supplemental brief that he filed yesterday.

10 I then was going to address and ask for the parties'
11 input on whether a different sentence is warranted in light of
12 Mr. Walsh's supplemental allocution.

13 Mr. Boyle, would you like to proceed otherwise?

14 MR. BOYLE: No. That makes sense to us, your Honor.

15 THE COURT: Government?

16 MR. VEATCH: No, your Honor. We've reviewed the
17 supplemental briefing from yesterday and are prepared to
18 respond orally to the extent your Honor would like to hear
19 from us.

20 THE COURT: That's fine. And because the first
21 part -- in the first part, I was going to consider the
22 supplemental briefing, why don't I hear from the government
23 right now, and then I'll bring it back to Mr. Boyle if he has
24 any kind of a reply.

25 MR. VEATCH: Thank you, your Honor. The supplemental

1 briefing's focus -- or one of its focuses is on the Court's
2 reliance on the firearm being loaded during the July 14th bank
3 robbery; and defendant argues that there is no evidence of
4 that, and the Court's reliance on the firearm being loaded in
5 reaching its sentence was perhaps overweighted with regard to
6 that.

7 The government argues that the Court was correct the
8 first time around. While there is no direct evidence, there
9 is no admission by the defendant that the firearm was loaded,
10 we do know, as the Court pointed out at the October 6 hearing,
11 that defendant is a meticulous planner who appears, more than
12 a preponderance of the evidence, to have followed the same
13 game plan, except for the inclusion of a driver in the second
14 robbery, with regard to the items that he used, the tools of
15 the trade that he used in these bank robberies, which were
16 only 10 days apart.

17 Specifically, at the time he was arrested on
18 July 24th, he had in his possession what appeared to be the
19 same hat, the same mask, the same light blue shirt and head
20 covering. He had door stoppers, sunglasses, items that he
21 appears to have had all during the July 14th robbery, as well
22 as the same firearm.

23 And it lends itself -- or it just makes sense -- it
24 makes less sense to disbelieve that that firearm would have
25 been loaded -- would have been unloaded during the prior bank

1 robbery, where the defendant even said, "I'm not playing," why
2 he would go in unloaded on that day where he was successful
3 and then unloaded on another day, when we know in fact the
4 defendant, from his criminal history as well, when he has
5 possessed actual firearms, as in this case, they have been
6 loaded. And I point to the prior U.U. Granted, the
7 conviction was reversed. The conduct still applies.

8 And so the government would just support your Honor's
9 prior findings that based on the evidence before the Court,
10 it's more likely than not that firearm was loaded on
11 July 14th. And in the alternative, we would argue even if it
12 wasn't, the Court was absolutely correct with regard to the
13 sentence based on the facts before the Court at that point,
14 that given the nature of the offense and the criminal history
15 of the defendant, the Court was correct in assessing how
16 significant that offense was, loaded or unloaded.

17 THE COURT: Mr. Boyle?

18 THE DEFENDANT: He's off on --

19 THE COURT: Yeah, you're -- I think you're on mute,
20 Mr. Boyle.

21 MR. BOYLE: No, I -- can you hear me now?

22 THE COURT: Yes.

23 THE DEFENDANT: Yeah.

24 MR. BOYLE: Can you hear me, your Honor?

25 THE COURT: Yes.

1 MR. BOYLE: Okay. Thank you. Just as I state in the
2 supplemental briefing, as you noted, Mr. Walsh is meticulous;
3 but I think the parties and certainly the U.S. Attorney's
4 Office is also meticulous in the language they use.

5 I mean, I think it's very significant that the
6 counts involving July 14th, there is plenty of language in
7 the superseding indictment regarding the offense in that case;
8 but at no time is the weapon characterized as being loaded.

9 In the written plea agreement that obviously they
10 worked on very carefully, in the two counts involving the
11 July 14th incident, again, the weapon is described. The
12 actions of Mr. Walsh are described in detail. At no point
13 is it alleged that --

14 (Audio cuts out.)

15 THE COURT: You -- Mr. Boyle, I'm sorry to interrupt.
16 Could you go back about 20 seconds? Because you -- your audio
17 faded out.

18 MR. BOYLE: Again, Judge, just for the record, I'm
19 perfectly comfortable just pausing this for a minute --

20 (Audio cuts out.)

21 THE COURT: And you faded out again, Mr. Boyle. I'm
22 so sorry.

23 MR. BOYLE: No. For whatever reason, this case has
24 been giving me issues regarding the connections. I'm
25 perfectly comfortable calling in with just my audio. Is that

1 okay with everybody?

2 THE COURT: Sure. So, why don't you keep your video,
3 mute yourself on the video, and then call in on the phone.

4 MR. BOYLE: Okay. I will try to do that as quickly
5 as possible.

6 (Short interruption.)

7 MR. BOYLE: Well, I don't know. Can you hear me now?

8 THE COURT: Yes.

9 MR. BOYLE: Okay. I guess we can try it this way
10 again.

11 THE COURT: Okay. Mr. Boyle, I believe you got cut
12 off where you talked about the July 14th -- the written plea
13 agreement, the actions of Mr. Walsh are described in detail.
14 At no point is it alleged that -- and at that point, you got
15 cut off.

16 THE DEFENDANT: Now you're off again.

17 THE COURT: Mr. Walsh, I'll direct traffic, please.

18 THE DEFENDANT: Okay. Fine. No problems there.

19 THE COURT: Yeah, we're having trouble hearing you.

20 MR. BOYLE: When anyone else starts talking, it
21 becomes completely distorted, and I've tried to call in using
22 the regular phone-in number. I enter the meeting ID, and
23 nothing happens.

24 THE COURT: Jackie, any suggestions for Mr. Boyle?

25 THE CLERK: And you tried calling in and you said it

1 gets -- you don't get a chance to log in?

2 MR. BOYLE: I'm going to try to call in again.

3 THE CLERK: Yes. But you seem fine now, though,

4 so --

5 THE DEFENDANT: We can hear you now. I'm almost

6 sure. I can hear you moving around.

7 THE CLERK: No.

8 MR. BOYLE: Okay. Again, I tried to call in on the
9 Cisco meeting landline; but after I entered the meeting code,
10 it didn't go through, or nothing happened.

11 THE COURT: Well, right now, we can hear you.

12 MR. BOYLE: Okay. We'll try.

13 So, again, Judge, I think it's just very significant
14 that nowhere in the superseding indictment in the counts
15 regarding July 14th is the weapon described as being loaded;
16 in the written plea agreement that my client signed off on to
17 and entered into, there's no language anywhere that it was
18 loaded. At one point in the process of taking the plea,
19 Mr. Walsh himself suggested that that gun wasn't loaded.

20 So, I think it is a significant factor, and it was
21 never alleged. It was not pled -- he didn't plead guilty to
22 that significant fact. It's not contained in the written
23 plea agreement. He does make that statement, as the
24 government notes, "I'm not playing," but he doesn't say, "This
25 weapon's loaded." He doesn't have his finger on the trigger.

1 It's not pointed at the tellers. It's briefly displayed,
2 again, as I think as we previously argued, not to terrorize
3 anyone, but to get quick compliance, get the funds he
4 received, and get out of there as quick as possible.

5 And I think that's the evidence. And you take all
6 of that together. I don't think it's fair to make that
7 assumption, and it is an assumption based upon just
8 circumstantial evidence related to the subsequent incident;
9 but it is an assumption, and it's not warranted by the actual
10 language of the superseding indictment or the written plea
11 agreement that Mr. Walsh entered into.

12 So, I would just argue that your Honor would please
13 revisit that analysis and not -- not make that assumption in
14 calculating what is a fair and reasonable sentence for the
15 incident involving July 14th and the possession of that
16 weapon. So thank you.

17 THE COURT: Thank you. So, I'm going to --

18 THE DEFENDANT: Judge, could I say something? I
19 wanted to --

20 THE COURT: Hold on, Mr. Walsh.

21 Mr. Boyle, Mr. Walsh wants to say something. I don't
22 know if you would like to advise him.

23 MR. BOYLE: Mr. Walsh, I've briefed the issue in
24 writing, and I've also just argued it orally. I'm not sure
25 what more can be said on the issue.

1 THE DEFENDANT: What can be said is that the
2 picture -- I don't care --

3 MR. BOYLE: I referenced the picture.

4 And, your Honor, yes, we did attach a photograph, a
5 still photograph that was provided by the government which
6 shows the July 14 bank robbery. It shows Mr. Walsh in
7 possession of the firearm. His finger's not on the trigger.
8 And Mr. Walsh is suggesting that if you look at the image,
9 you can see the chamber of the weapon, and --

10 THE DEFENDANT: The chamber is empty.

11 MR. BOYLE: His argument is that that chamber is
12 empty. You would not be able to see through, essentially,
13 the chamber if it had been loaded.

14 THE COURT: All right. Government, any thoughts on
15 that?

16 You're on mute.

17 MR. VEATCH: Your Honor, I'm pulling up the picture
18 now.

19 Your Honor, I think -- the issue we have with that
20 assumption is, one, it's a poor picture. Two, every firearm
21 is different. We would want some sort of testimony or some
22 sort of example from an actual -- the actual firearm to see
23 whether or not the bullets would be visible or the area that
24 would be not visible.

25 And I apologize, counselor, which -- if I may, your

1 Honor, which part of the firearm are you saying you would be
2 able to see through or not see through if it was loaded? And
3 I'm looking at your exhibit to the supplemental sentencing
4 memo.

5 THE DEFENDANT: The chambers --

6 MR. BOYLE: I assume the argument is that --

7 THE DEFENDANT: The bullets, where the bullets are
8 located, you can blow that up as much as you want. They're
9 not going to see any -- you're not going to see any bullets
10 in the gun. There's no bullets in the gun.

11 MR. VEATCH: Your Honor, I would just say that based
12 on this image, it is -- and I understand defendant's
13 argument that the cylinders --

14 THE DEFENDANT: It is my --

15 THE COURT: Mr. Walsh, it's not your place right now.

16 MR. VEATCH: We understand the argument that the
17 cylinders would be empty on an unloaded firearm if you were
18 viewing it at the correct angle. We would argue that this
19 image is not one from which we can draw that conclusion.

20 THE DEFENDANT: That's not true.

21 THE COURT: All right.

22 THE DEFENDANT: You can bank on that, because looking
23 down from that point of view, it would be noticeable. That's
24 probably why I did what I did.

25 When you buy a gun off the street, they don't give

1 you bullets. I don't know how many guns you've bought off
2 the street, but any guns I bought off the street, you know
3 what I'm saying, they give you the guns. You know, you get
4 the ammo later.

5 What I'm saying is there was no bullets in that
6 particular weapon at that time.

7 I know I can't challenge the 924(c)(1)(A) because
8 basically, the plea was withdrawn -- I mean, it was denied
9 on the plea being withdrawn. I understand that. I'm just
10 saying I'd like a fair shake.

11 MR. VEATCH: Your Honor, if I may, counsel pointed
12 out that Mr. Walsh, during the change of plea hearing, noted
13 that the gun did not have any bullets. We would just remind
14 everybody Mr. Walsh also initially took the position that it
15 was a replica firearm before conceding that, in fact, it was
16 real. So, as to a credibility issue, there is certainly that.
17 That's on page 66 of the February 20th, 2020, transcript.

18 MR. BOYLE: That's correct, Judge. And he withdrew
19 that, and he pled guilty to the two counts involving the
20 July 14th incident and the possession of that weapon.

21 But again, he never pled guilty to being in
22 possession of a loaded weapon on July 14th or engaging in a
23 bank robbery with a loaded weapon. That's --

24 (Audio cuts out.)

25 THE COURT: You just faded out, Mr. Boyle.

1 MR. BOYLE: Reasonable minds can disagree about that,
2 but I don't think we can disagree about what he was
3 specifically charged --

4 (Audio cuts out.)

5 THE COURT: Yeah, Mr. Boyle, your audio is messed up.
6 I think if you could start again after, "But again, he never
7 pled guilty to being in possession of a loaded weapon on
8 July 14th or engaging in a bank robbery with a loaded weapon,"
9 and then you cut out.

10 MR. BOYLE: Okay. That's essentially it, Judge.
11 It's what he was specifically charged with. It's what he
12 specifically pled guilty to. And none of that -- I think
13 where I broke off was that Mr. Walsh is suggesting that the
14 photograph that we attached as the exhibit is dispositive on
15 the issue of whether the gun was loaded. I think reasonable
16 minds can disagree about that.

17 But the bottom line is that no one can disagree with
18 what he was specifically charged with and what he actually
19 pled guilty to. None of that involved an allegation or an
20 admission of the possession of a loaded firearm on that day.
21 And, therefore, your Honor's assumption, however reasonable
22 that may be, I think it was just given too much weight,
23 considering the actual charge and what he pled guilty to.

24 And again, we would ask you to revisit that and take
25 a fresh look at the aggravating factors that may or may not

1 have existed on that July 14th incident.

2 THE COURT: All right. I appreciate both sides'
3 arguments on this. I'm going to stick with my initial view
4 that the gun was loaded on July 14th.

5 True -- I agree with Mr. Boyle. He's correct. The
6 indictment doesn't charge that the weapon was loaded, but it
7 didn't have to charge that the weapon was loaded in order to
8 properly charge a bank robbery. The plea agreement didn't --
9 didn't admit -- Mr. Walsh didn't admit in the plea agreement
10 that the gun was loaded; but the plea agreement is an
11 agreement, so Mr. Walsh didn't have to admit that. And there
12 was a factual basis for the plea of guilty of the July 14th
13 bank robbery, even without the gun being loaded.

14 Mr. Boyle also correctly said that the teller told
15 the FBI that she didn't believe it was a real gun, but we have
16 Mr. Walsh's admission in his plea agreement that it was a real
17 gun, a .357-caliber recover --

18 THE DEFENDANT: After I got browbeat from this
19 statement, right after I told you that the gun wasn't real.

20 "THE COURT: Sure. I see our factual basis floating
21 out of the courtroom and down Dearborn Street, which would
22 require that we have a trial on Monday."

23 That's heavy-handed browbeating somebody down.

24 I took that plea in good faith to get 123 months.
25 If you got all three points, you got 123 months for that

1 plea.

2 I'm just saying, I'm sorry for the rant that I did on
3 October 6th. I truly mean it. But looking at what I pled to
4 and what the plea agreement is, I didn't expect you to try to
5 go over and raise my category to a category IV and jack me
6 with another three years on top of that other 123 months. I
7 didn't expect it.

8 I mean, you can do this, but I'm trying to -- what
9 I'm trying to do and what Mr. Boyle and I are trying to do is
10 get you to see that maybe that the 96 months is a little bit
11 harsh for the COVID-19 and all the rest of everything else
12 that's going on. Maybe you could give a downward departure
13 for my age or whatever.

14 And in that downward departure, you could cut time
15 off of the 96 to maybe 36 months, with the 60 months for the
16 924(c)(1)(A) that I can't do anything about. That's true. I
17 can't do anything about that. You ruled on that. I accept
18 your ruling.

19 All I'm trying to do is trying to not die in prison,
20 okay, over something that -- what I'm charged with and what
21 happened and what went down is not worth dying in prison over.

22 I can see your point of view where you feel that
23 I'm just going to go out there and do the same thing again.
24 I understand this. By my record, I see it. But I did try
25 out there as hard as I could. Okay? I was out there nine

1 times longer than I was at any other time. I know nine months
2 doesn't seem like anything. It could have been -- whatever.
3 I got into financial distress. I did what I did. All right.

4 That being said, I didn't want to hurt anybody.
5 I never had no intention on hurting anybody. If I had
6 intentions on hurting anybody, with or without a loaded gun,
7 I would have acted entirely differently. I had all the
8 chances in the world at blowing people away and everything
9 else. I don't -- I'm not a nut. I'm not on that.

10 I'm 74 years old. I'm kind of tired of the whole --
11 the whole thing. All I want to do is do the minimum amount
12 of time that I can and get out and get vocational training.
13 That's all.

14 If I had the vocational training, I wouldn't even
15 be in here. It would be -- I wouldn't be in this courtroom.
16 We wouldn't be having this. If I had had a livable wage out
17 there, I wouldn't be here. That's what I was trying to impart
18 to you the whole time.

19 I can understand where you could look at my
20 background and you can say, "Well, hey, I feel that he never
21 learned anything and that he's just going to go out there and
22 repeat offender again and do these things." All I'm asking
23 for is a chance to get back out into the free world at some
24 reasonable time.

25 156 months is beyond what I might be able to do. I'm

1 74 years old. I'm not a kid no more. If I just had the
2 60 months for the 924(c), I could probably lay out here,
3 finish this time, get some culinary training while I'm inside,
4 and come out and do this thing. I could be a cook. I could
5 drive a truck.

6 I don't want to die in prison. Should I die in
7 prison over -- because of my past record? My past record's
8 got nothing to do with this other. I know you can look at it,
9 but it really shouldn't be looked at like that. A 32-year-old
10 letter that you looked at is not like it was yesterday. This
11 was 32 years ago. I spent 60 months in prison. I was out of
12 contact, no training, nothing. I got a GED. You know that.

13 All I'm saying is that -- I took a couple of courses
14 while I've been in here on budgeting and credit and stuff
15 like that, financing. All I'm trying to do is say that I'm
16 truly sorry for any inconvenience I might have caused you or
17 inconvenience. Okay? I'm truly sorry about it.

18 If I could do everything over again, I would have had
19 culinary training, and I wouldn't have been in the position
20 that I'm in, period. Trust me, I just -- I'm just -- I don't
21 know what to say. You know?

22 I kind of went off because I was looking at some
23 sentence disparity on a couple of other cases, and I realize
24 when I look at them now that their backgrounds are not my
25 backgrounds. My case is an entirely different case from

1 anybody else's case, period.

2 I realize that I've got a terrible past and that I
3 got -- and it looks like repeat performances over and over
4 again. I did try, and I did try really hard. Physically,
5 what happened with my knees and my hands in them freezers is
6 what made me realize that I can't keep doing what I'm doing
7 and maintain it.

8 And I should have -- I don't know. I panicked, I
9 guess. I had bad thoughts, and the old thoughts came back,
10 and I went on with that bad thought. The thoughts were wrong.
11 I shouldn't have done it. I see the errors of my ways.

12 You know, if I'm given a chance for vocational
13 training, I believe I can do some type of good, really,
14 seriously. If I'm sentenced to 156 months, that's an awful
15 long time. I might not survive 156 months. I'm looking at
16 it truthfully. That -- and all that together with what I was
17 looking at, the sentence disparity and you upping my category
18 to a category IV when you were basing something off of a 1964
19 conviction when, in fact, that conviction did not involve a
20 firearm, you agreed on that in the last court appearance. I
21 would argue that putting me in a category IV is just not the
22 thing to do. You could do it under statute.

23 It's like this. Guidelines are advisory. I realize
24 this. You could take and give me anything that you want to.
25 It's your power to do that. I realize that. I was just upset

1 with the sentence because I'm looking at 154 months, and I'm
2 74 years old right now. I don't know if I've got that much
3 time left in my body. And to sentence me to that would be
4 like a life sentence for me to die in prison.

5 Now, my past caught up with me in the 1987 armed
6 robbery. They gave me 30 years, in all reality, to kill me
7 so that I would die in prison. I'm looking at that reality.

8 I got out. Instead of sentencing me -- or sending
9 me to a halfway house, they sent me to a transition center
10 where they don't even feed you. So, immediately I had to
11 start, you know, doing other things to get money to get food
12 and stuff.

13 Then I had to start -- they'd parole me from one
14 false identity to a new identity. That was my fault, my --
15 also, daily. It took me over a month or so to get that
16 straightened out so that I could finally get my ID to go
17 to work.

18 I started going to work every day, early in the
19 morning, way early in the morning, late at night. I kept
20 going to the -- to work. I kept going to work to get my
21 apartment together, to get the rent together, to get furniture
22 together, to get everything together. I had to work hard to
23 do this, and I was working hard to do it. I'm not trying to
24 be a smart-ass and clever and all the rest of the -- anything
25 deceitful.

1 I realize what I said to you was bad. I realize how
2 I felt at that time. It just -- it just made me go off into a
3 different mindset because 156 months, to me, I might not
4 live -- we don't know how long we've got left to live. The
5 COVID-19 is real. It's very real. People are dying in
6 prison.

7 I realize that you could sentence me to anything you
8 want to sentence me to because you could have done so just by
9 statute. You could just say, "The Guidelines say this, but I
10 feel this, and on the statute, I could sentence you to
11 whatever it is that I want to sentence you to anyway."

12 THE COURT: Okay. Mr. Walsh, one second.

13 You know, I -- I've reminded you on probably a dozen
14 occasions during this case that whatever you say, even if you
15 think you may be helping yourself, could end up hurting
16 yourself; and, therefore, I advised you to let your lawyer
17 speak for you rather than have you speak for yourself, other
18 than at allocution, which, of course, is your statement.

19 So, I didn't feel the need to remind you again, but
20 you've been going on for so long that I thought I would step
21 in and remind you of that again.

22 THE DEFENDANT: Is there anything I've said so far
23 that seems to be harmful that I've said so far to you?

24 THE COURT: Mr. Walsh, I'd advise you to not go any
25 further. I'm going to give you a chance to give a statement

1 during the second half of the sentencing hearing if I decide
2 that a sentence higher than the one I was going to give you
3 is warranted. So, I'd advise you to stop right now.

4 THE DEFENDANT: All right. I'm stopping.

5 THE COURT: But it's up to you. I'm not going to --

6 THE DEFENDANT: I've said all that I need to say.
7 I'm pretty -- you know where -- you know -- you know what I --
8 I've tried to communicate to you, so, hey, I've done the best
9 that I can do.

10 Now, my lawyer, you're going to have to try to get in
11 touch with him. I don't know how this is working out. He
12 keeps having technical difficulties.

13 THE COURT: Are you still with us, Mr. Boyle?

14 MR. BOYLE: Yes, Judge. I don't know if you can see
15 me. I'm on the audio call now, which is a much better
16 connection for me.

17 THE COURT: I can see you and hear you.

18 MR. BOYLE: Okay. Thank you.

19 THE COURT: So, in looking at the gun, the photo of
20 Mr. Walsh during the July 14th robbery, he's holding a gun;
21 and the gun looks -- well, he admitted it was the .357
22 revolver in the plea agreement, and that admission is
23 confirmed by comparing the photo of the weapon at doc 134-1
24 at page 1, which is July 14th, and comparing that with the
25 photo of the firearm that was recovered on July 24th, which

1 is docket 101 at page 36. That's the same weapon.

2 I do not see any indication from this photo that the
3 firearm -- the photo of the July 14th robbery, that the
4 firearm was not loaded. Mr. Walsh has been telling us that
5 the firearm was not loaded. I find that that's not credible.
6 As the government pointed out, for quite some time, Mr. Walsh
7 was saying, this was before his plea, that it was a replica
8 weapon, which, of course, it wasn't. So, that was a
9 misrepresentation of the facts. And I would find by a
10 preponderance of the evidence, well over a preponderance of
11 the evidence, that the gun Mr. Walsh had at the July 14th
12 robbery was a real gun and that it was loaded.

13 When Mr. Walsh was arrested before he was able to
14 complete what would have been the July 24th robbery, he was
15 found with a loaded .357 revolver. The most logical
16 inference, and I think the only logical inference, is that
17 Mr. Walsh had the same weapon also loaded for the July 14th
18 robbery. I can think of no reason why Mr. Walsh would have
19 brought a loaded .357 to the July 24th robbery, or what would
20 have been the July 24th robbery, but not to what actually was
21 the July 14th robbery, which took place.

22 And Mr. Walsh's criminal history shows that he has a
23 great comfort with and a great affinity for firearms, loaded
24 firearms, and willingness to use them.

25 At the end of the day, this particular issue does not

1 move the needle -- would not have moved the needle on the
2 ultimate sentence I imposed because it's undisputed that
3 Mr. Walsh was bringing a loaded .357 to the -- what would
4 have been July 24th robbery, and that's extremely serious
5 conduct; and even if I had found that he didn't bring the
6 loaded weapon -- that the weapon wasn't loaded at the
7 July 14th robbery, it would not have made a difference to my
8 determination of the sentence, as I intended to give it back
9 in October.

10 There's also the second issue in Mr. Walsh's
11 supplemental brief, which has to do with the 1964 armed
12 robbery involving not a firearm, as I had initially thought,
13 but rather, just a knife. And the brief argues that because
14 the 1964 robbery, which is reflected at paragraph 55 of the
15 PSR, involved just a knife rather than a gun, I should revisit
16 my determination that there was an appropriate 4A1.3(a)
17 departure raising Mr. Walsh's criminal history from III to IV.
18 And of course, the -- that 1964 armed robbery didn't carry any
19 criminal history points.

20 So, I don't know if the government has any thoughts
21 on that.

22 You're on mute.

23 MR. VEATCH: Thank you, your Honor. Your Honor
24 actually addressed this issue during the October 6th hearing,
25 according to the transcript at 21, going into 22. When the

1 issue was raised about whether this was, in fact, an armed
2 robbery or how significant it would have been or not, the
3 Court made clear that with or without that armed robbery, the
4 prior murder plus the conduct in which Mr. Walsh was found
5 with a loaded .38-caliber revolver, loaded 12-gauge shotgun,
6 and loaded Uzi, along with numerous rounds of ammunition, and
7 I'm quoting, "The murder plus that one certainly more than
8 warrant an upward departure of one criminal history category
9 level."

10 The government would agree with the Court's prior
11 finding, as well as adding the additional criminal conduct as
12 reflected in the PSR that did not receive criminal history
13 points, including the obstruction of justice that involved
14 Mr. Walsh having a handcuff key or having been found with a
15 handcuff key or contraband at a penal institution, as well
16 as -- now, this was -- as well as even if the Court did not
17 depart upward with regard to criminal history, under 3553(a),
18 the ultimate result the Court resulted in, in light of the
19 other conduct described, especially the non-criminal
20 violations while in custody, in addition to the conduct
21 we've discussed, would certainly warrant where the Court
22 landed.

23 THE COURT: Mr. Boyle?

24 MR. BOYLE: Well, Judge, again, hopefully you all
25 can hear me.

1 THE COURT: We can.

2 MR. BOYLE: Thank you, Judge. I mean, as we state
3 in our pleading, I do think it is significant. I don't -- I
4 don't think anyone would question your Honor being troubled
5 if there was another incident where Mr. Walsh had used a
6 firearm to engage in some kind of theft or robbery.

7 I think even from the beginning, we knew because
8 of the disposition of the case, the fact that he received
9 supervision would suggest that a firearm wasn't involved; and
10 then luckily, we were able to confirm that with the help of
11 the Probation Office. And everyone's in agreement that the
12 Presentence Investigation Report will ultimately be corrected
13 once Mr. Walsh is sentenced and a final amended and corrected
14 Presentence Investigation Report will be prepared.

15 But I do think it is significant; and the fact that
16 we now know that a firearm wasn't involved in that case, that
17 wasn't another incident with Mr. Walsh having a firearm, I
18 think again, we're asking you to revisit the issue. Again,
19 the serious convictions that Mr. Walsh has in his background,
20 he was significantly punished for those. It's not like he was
21 getting away with anything. And I think that's something also
22 to consider.

23 A lot of times a judge might move someone into
24 another category because they feel like they haven't suffered
25 the consequences of these -- of his prior bad acts and prior

1 convictions and that that should be at least reflected in an
2 enhanced criminal history category, but that isn't the
3 situation we have here, clearly. Mr. Walsh was convicted of
4 the crimes he committed and received very substantial
5 sentences.

6 The second sentence he received was -- again, was
7 maxed out. It was a 6-to-30-year range. The judge maxed him
8 out, gave him 30, and then doubled it because of his prior
9 conviction, so gave him an extraordinarily high sentence.

10 So, this is an individual who does have certainly
11 those two cases, very significant, but he was thoroughly
12 punished for them, served his sentences. And now we know
13 that one of the cases your Honor did use to take him out of
14 category III, we now know the actual facts; and again, we
15 would suggest that this isn't -- again, this is an individual
16 who pled guilty to an original plea agreement, the
17 expectation, even knowing all of these cases in his criminal
18 history, the parties agreed that the appropriate and fair
19 category was category III. The Probation Office, after they
20 did their analysis, also concluded, again, recognizing the
21 seriousness of the cases in his history, that he should be a
22 category III.

23 So, now that we know that that case when he was
24 17 years old, now that we know it didn't involve a firearm,
25 we should certainly keep him -- as was anticipated in the

1 plea agreement, we should keep him in category III. And that
2 does make a difference on the Advisory Guideline range that
3 your Honor has to consider when imposing a sentence.

4 THE COURT: Thank you, Mr. Boyle. Again, I
5 appreciate both sides' arguments. They're very well stated.
6 I'm going to stick with my upward departure that placed
7 Mr. Walsh in criminal history category IV.

8 Mr. Walsh received zero criminal history points for
9 the murder of the police officer. That's paragraph 57. And
10 that -- that crime, in and of itself, was sufficient to
11 support the upward adjustment to category IV. Given the
12 murder of the police officer, for which he received zero
13 criminal history points, given the possession of the loaded
14 Uzi, for which he received criminal history points, the
15 robbery in paragraph 55 was just a cherry atop an already-iced
16 cake in terms of the 4A1.3(a) departure.

17 So --

18 THE DEFENDANT: Even though --

19 THE COURT: Well, back -- I want to pick up where I
20 left off back in October.

21 I wanted to justify the sentence that I gave, which
22 is the 96 months on Count 4, the 96 months on Count 1
23 concurrent to the Count 4, and the 60 consecutive months on
24 Count 2, for a total of 156 months. And I was going to
25 explain why I arrived at that sentence when Mr. Walsh gave

1 his continued allocution and we decided to adjourn -- I
2 decided to adjourn.

3 I would emphasize all the aggravating factors that
4 I mentioned in discussing the 3553(a) considerations, and I
5 would just emphasize the following: The seriousness of the
6 crimes of conviction, Mr. Walsh's criminal history. It's been
7 a true revolving door. And that's a cliché, but it's very apt
8 in this case.

9 Mr. Walsh has shown an incorrigibility throughout
10 his life; and he cannot be outside of prison for much time
11 without committing further crimes, and not just any crimes,
12 but either deadly, in the case of a murder, or potentially
13 deadly crimes.

14 There's the matter of incapacitation, which is part
15 of subsection (a)(2) of 3553(a), the need to protect the
16 public from further crimes of the defendant. If Mr. Walsh
17 gets out of prison while he's physically capable of committing
18 an armed robbery or another violent crime, it's likely -- his
19 history shows that it's likely that he will do so. For the
20 sake of the people who could come into harm's way, that's a
21 risk that I'm unwilling to take.

22 Mr. Walsh is a person who, despite having earned a
23 20-to-40-year indeterminate sentence for murder and then a
24 60-year sentence for armed robbery, went out and committed
25 another armed robbery, the bank robbery, and was about to do

1 a second, with a loaded .357 revolver. And Mr. Walsh is
2 somebody who's shown himself capable of putting five bullets
3 into another person's chest, killing that person, and the
4 person happened to be a police officer.

5 Mr. Walsh's criminal history, his inability to be out
6 of prison without committing violent crimes, his in-court
7 behavior prior to the sentencing hearing, the October
8 sentencing hearing all show somebody who is unable or
9 unwilling to govern himself accordingly.

10 And I -- I've been a judge for 10 years, over
11 10 years, and I've always bent over backward to avoid giving
12 a sentence that would carry a non-trivial risk of effectively
13 being a life sentence; but Mr. Walsh has -- has backed me and
14 the criminal justice system into a corner.

15 And again, I'm putting myself back to what I was
16 going to say in October. My giving Mr. Walsh the 156-month
17 sentence is the only appropriate course in light of his
18 criminal history, the seriousness of his offenses, present
19 offenses, and the danger he poses to the community. And I
20 would go so far as to say that it would be irresponsible of
21 me not to impose that 156-year sentence.

22 And I do that while fully recognizing -- I was going
23 to do that back in October while fully recognizing that the
24 156-month sentence, the 13-year sentence, which would result
25 in Mr. Walsh being released in his early 80s, given that he's

1 already served about two-and-a-half years of his sentence,
2 could be a life sentence. But I believe, for the reasons I
3 gave, that that's not just an appropriate sentence, but the
4 only appropriate sentence, again, putting myself back in the
5 October time frame.

6 A \$300 special assessment is mandatory. Restitution,
7 the \$3700 to the bank that was robbed on July 14th, I'm going
8 to impose. I wasn't going to impose a fine on Mr. Walsh,
9 given his inability to pay.

10 In terms of supervised release, I believe there is a
11 five-year maximum term of supervised release; and I was going
12 to impose a five-year term of supervised release, given the
13 need to deter Mr. Walsh from committing further crimes upon
14 what would have been his release had I -- if I give him a
15 156-month sentence, and the supervision and the benefits --
16 and the services that the Probation Office can provide.

17 I believe I asked Mr. Boyle at the beginning of this
18 hearing on October 6th whether he was going to have any
19 objections to the conditions of supervised release recommended
20 by the Probation Office, and I believe he said no.

21 Mr. Boyle, I could be misremembering.

22 MR. BOYLE: Well, no, Judge. And we filed a written
23 response. I think it would be Document 115 on the docket.
24 Our -- it was titled, "Sentencing Response." And I'm just
25 reviewing it again for my benefit.

1 THE COURT: Oh, you know what, you're right,
2 Mr. Boyle.

3 MR. BOYLE: And I'm just confirming what you had
4 stated. I think the only -- we don't have any objections to
5 the mandatory conditions. We do not -- well, we do set forth
6 with some specificity which conditions we do not object to,
7 but then there are other various discretionary conditions that
8 they should not be imposed as they have no relevance to this
9 defendant or the nature of his offense and would serve no
10 purpose.

11 I guess we can go through them individually, or if
12 you want me to just put on the record the ones that we don't
13 have an objection to.

14 THE COURT: Yes. I see that you don't have an
15 objection to any of the mandatory conditions.

16 MR. BOYLE: Correct.

17 THE COURT: Discretionary conditions 4, 6, 8, 14
18 through 18, and 22 to 23. And in terms of the special
19 conditions, you have no objection to 5 through 7 or 10 and 11.

20 MR. BOYLE: Right.

21 THE COURT: You do object to the others. So, let's
22 go through the ones that there's an objection to.

23 MR. BOYLE: Well, if we need to, Judge. We're --
24 just kind of in an excess of caution, I don't think we're
25 objecting to any that Probation has actually recommended.

1 There's just obviously this whole assortment of ones that
2 can be recommended.

3 THE DEFENDANT: Three years.

4 MR. BOYLE: But we are -- we were just suggesting
5 that the ones that aren't recommended should not be imposed
6 because they just -- and I think Probation was correct in
7 their analysis. They don't apply to this defendant. And we
8 might have stated that because the government might be seeking
9 conditions that Probation are not seeking, but I don't want to
10 speak for them.

11 THE COURT: You know what, I think -- that's what I
12 recall, but I just want to confirm that Probation has not
13 recommended -- has not recommended anything that you would
14 be objecting to.

15 MR. BOYLE: That is --

16 THE COURT: And the mandatory, it's just 1, 2, and 5,
17 which you don't object to. Discretionary, we have 4, 6, 8,
18 14 through 18, 22 and 23, which you don't object to. And then
19 special, we have 5 through 7, 10 and 11, which you don't
20 object to.

21 So, it turns out my recollection was correct that --

22 MR. BOYLE: That is correct, Judge. The one
23 objection the defendant does have would be to imposing the
24 maximum five-year term of supervised release. As an
25 alternative, we suggested a total of three -- three years of

1 supervised release on each count to run concurrently.

2 THE COURT: Okay. On that, given Mr. Walsh's
3 criminal history and given what he has consistently said
4 is his need for job training and services, I think the
5 five-year maximum term is appropriate, again, for deterrence
6 purposes because if Mr. Walsh were to re-offend upon release,
7 he'd face a sentence not just in the new case, but a
8 revocation sentence in this case.

9 And again, the Probation -- on the positive side, on
10 the non-punitive or non-deterrent side, the Probation Office
11 provides services to defendants who are released; and I think
12 Mr. Walsh, if he were to be released, could avail himself of
13 those services.

14 So, I'm going to go with the full five years. Under
15 *United States* --

16 MR. CHRISTIANSEN: Your Honor --

17 THE COURT: Yes?

18 MR. CHRISTIANSEN: I'm very sorry, Judge. This is
19 Jason Christiansen from Probation. Looking through my
20 paperwork and documentation here, with specific regard to
21 Count 4, I believe there may be a supervised release range
22 that tops out at three years, both statutorily and under the
23 Guidelines.

24 So, I realize that's a distinction without a
25 difference because of the other counts of conviction, but

1 may I --

2 THE COURT: Yes, right.

3 MR. CHRISTIANSEN: So, would it be possible for it to
4 be five years on the other two counts, but three years on
5 Count 4?

6 THE COURT: Yes. It would be five years on Counts 1
7 and 2, and three years, which is the maximum, on Count 4.

8 MR. CHRISTIANSEN: Thank you, Judge.

9 THE COURT: And I misspoke when I said there was a
10 five-year maximum on all three counts.

11 Mr. Boyle, under *United States versus Anglin*, the
12 defendant -- which is 846 F.3d 954 at 969 to 970, the
13 defendant has the option. If the defendant would like for me
14 to read all the supervised release conditions on the record,
15 I'd be happy to do so. Alternatively, if Mr. Walsh would
16 like to waive the reading of those conditions, that's his
17 option as well.

18 MR. BOYLE: Well, Mr. Walsh, we've filed a written
19 pleading wherein we did not object to the various conditions
20 as recommended by Probation. I think the judge has indicated
21 that he's only going to impose the conditions that were
22 contemplated by Probation.

23 Do you understand those conditions and would waive
24 the formal reading of each specific condition?

25 THE DEFENDANT: I'll waive the formal reading.

1 MR. BOYLE: Thank you, Judge.

2 Thank you, Mr. Walsh.

3 THE COURT: Sure. The government has a motion for
4 preliminary order of forfeiture as to the .357 revolver. Any
5 objection to that, Mr. Boyle?

6 MR. BOYLE: No, your Honor.

7 THE COURT: Okay. I'll grant that motion and enter
8 the preliminary order of forfeiture.

9 Under *United States versus Harris*, 718 F.3d 698 at
10 703, footnote 2, I'm supposed to say whether I would have
11 given the same sentence -- and again, I repeat I'm putting
12 myself back in the October time frame -- would have given
13 the same sentence had I agreed with the defendant on the
14 disputed Guideline issues. And there are times when I answer
15 that question yes, but in this instance, I'm going to answer
16 the question no.

17 With respect to one of the Guideline issues, even if
18 I found that the felon in possession, which was Count 4, was
19 not in connection with an attempted bank robbery for purposes
20 of 2K2.1(b)(6)(B), I would have imposed the same sentence
21 because even if Mr. Walsh's conduct did not technically
22 qualify as an attempted bank robbery, he clearly was about to
23 commit an armed bank robbery. So, the conduct was the same,
24 and the conduct would have resulted in the same sentence, with
25 or without that offense level enhancement.

1 Second, even if I did not give an upward departure
2 under 4A1.3(a), I still would have imposed the same sentence
3 because Mr. Walsh's actual criminal history is what it is.
4 So, instead of it being a departure under 4A1.3(a), it would
5 have been a variance under 3553(a).

6 The criminal history amply demonstrates that
7 Mr. Walsh needs to be incapacitated. Here's somebody who was
8 in his early 70s who committed one very well-planned armed
9 bank robbery and was about to commit another. He certainly --
10 as somebody in his 70s, certainly has his aches and pains and
11 ailments that people get when they advance in age, when they
12 reach their 70s; but he's in relatively decent shape.

13 And a 156-month sentence would -- if he earns his
14 good time, would have resulted in him being released in his
15 early 80s, at which point the risk of his being able to commit
16 more crimes would have been diminished, not eliminated by any
17 stretch, but diminished.

18 So -- and then there were various admonishments about
19 appeal rights and the like that I was going to do at the
20 October hearing, but before I do that -- well first, we've
21 been going for about an hour 10 minutes. Does anybody need
22 to take a break?

23 MR. BOYLE: No, thank you, your Honor.

24 MR. VEATCH: Not the government, your Honor.

25 THE COURT: In the minute order that I entered on

1 October 6th, I asked the parties to address whether a
2 departure or a variance based on Mr. Walsh's remarks, his
3 supplemental allocution at that hearing is permitted, and if
4 so, whether it's warranted.

5 Probation, I don't know if you have a view on this;
6 but I'd ask for your views, if you have them and would like
7 to share them.

8 MR. CHRISTIANSEN: Judge, subsequent to having this
9 case reassigned to me from a former presentence investigation
10 officer, I went through the Sentencing Guidelines. I looked
11 at potential offense level adjustments and potential departure
12 grounds; and I didn't find anything, either specifically
13 within the Sentencing Guidelines or case law that I reviewed,
14 that necessitated a variance or a departure.

15 I guess to my way of thinking, Judge, your Honor is
16 in a unique position to assess what has taken place in this
17 case; and I do not advocate on behalf of the Probation Office
18 any departure or variance based on what has occurred, with
19 full appreciation for the fact that your Honor is in a unique
20 position to assess whether that's an appropriate path forward.

21 THE COURT: Government, what are your thoughts?

22 MR. VEATCH: Thank you, your Honor. Your Honor,
23 recognizing the defendant has attempted to display some
24 explanation for his conduct on October 6th, the fact is he
25 made some very specific threats to harm your Honor, your

1 Honor's family, the prosecutor, and the Probation Office.
2 I was not the prosecutor at that time, but having read the
3 transcript even cold, there are some very harsh threats that
4 appear to indicate at the very least the defendant was
5 attempting to obstruct his sentencing, to the extent that he
6 was attempting to influence your Honor, the Probation Office
7 that would be supervising him if he was to be released, or
8 the prosecutor who still had arguments to make, or your Honor,
9 who still had portions of the sentence to impose.

10 We think that the Court would be well-justified,
11 under 3C1.1, if it sought to increase the offense level by two
12 levels for attempted obstruction of the sentencing proceeding
13 relating to the instant offense and relating to the
14 defendant's offense of conviction or offense conduct. That
15 would result at a high end sentence -- or a sentencing range
16 of 92 to 115 months, plus a 60-month for the 924(c) charge,
17 which would get you to a 152-to-175-month range.

18 We do believe that the Court would be well-justified
19 were it to increase the defendant's offense level, either
20 under 3C1.1, or by analogy, through a variance, to reflect
21 the fact that defendant made those incredibly threatening,
22 prolonged statements that, unlike most allocutions, allowed
23 the Court to actually see what was going on inside the
24 defendant's head.

25 You know, it is something that he was being honest

1 in portraying to the Court his true feelings and his true
2 inability to control himself, even in the most controlled
3 settings, even when it was completely against his best
4 interest, which is a big concern. As the defendant has less
5 to lose, if you will, as he gets older and perhaps has less
6 opportunities, there is that concern that he will give in to
7 his less-controlled impulses.

8 THE COURT: Thank you.

9 Mr. Boyle?

10 MR. BOYLE: Yes, Judge. In making this argument,
11 I'm not in any way minimizing or rationalizing anything that
12 was said by Mr. Walsh at that original sentencing hearing.
13 I would just -- my only attempt would be to try to put it
14 into some context, which I think Mr. Walsh has done himself
15 already.

16 I think that's really a good starting point, the fact
17 that Mr. Walsh has come back before your Honor to continue his
18 sentencing and has shown no behavior like that, has not been
19 disrespectful, has not shown any anger. He has been polite.
20 He has been thoughtful. He has made further arguments on his
21 own behalf in mitigation. And I think that should tell us all
22 something, tell your Honor something, that that was an
23 uncharacteristic outburst.

24 Obviously, any defendant who is anticipating his
25 sentencing, there's hopes. There's expectations. And again,

1 this is -- I think he was -- I think he's 73 now. I think he
2 was 72 back in October. And he had hopes that by accepting
3 responsibility, by pleading guilty, by waiving his right to
4 a trial, he would be receiving some benefit.

5 We also had hopes, as you've already referenced,
6 of convincing your Honor not to impose the four additional
7 points for the attempted bank robbery that he did not plead
8 guilty to, but now he's finding out during the sentencing
9 that that is going to be used against him. It is going to
10 be used to increase the offense level and call for a higher
11 sentence than he had hoped for. That's a disappointment.

12 And again, none of this -- I mean, we are going to,
13 I assume, have an appeal. We are going to challenge some of
14 your Honor's findings, as we've articulated orally and in
15 pleading. It's just putting yourself in Mr. Walsh's shoes,
16 again, you have hopes and expectations when you finally get
17 your day in court and you're going to be sentenced, and it
18 was, frankly, one disappointment after another.

19 The attempted robbery is going to be used against
20 him to enhance his sentence. He's going to be taken out of
21 his anticipated criminal history category and put in a higher
22 criminal history category. And essentially, about -- you
23 know, worst-case scenario, as far as the Guideline range
24 sentence, it sounded like that's going to be imposed, and
25 that was greatly disappointing, greatly frustrating, and

1 greatly upsetting.

2 That's -- I can't speak to the actual things
3 Mr. Walsh or -- said. I am just trying to put it in context.
4 And then he has his outburst, but then he has come back again
5 before your Honor and has conducted himself, I think, in an
6 entirely appropriate way.

7 You have indicated you're going to impose a sentence
8 of 156 months. Even with the enhancement that the government
9 has suggested, that would fall within that range that they've
10 spoken of. But even if you were to consider that, you're
11 essentially already at that kind of a number with 156 months,
12 and so obviously, we feel that that 156 months is more than
13 necessary in this case. So, you're already there. So, I
14 don't think you need to find any other enhancement to
15 Mr. Walsh's sentence.

16 Thank you, Judge.

17 THE COURT: Thank you. What I'm going to do now
18 is -- well, why don't I -- why don't I ask -- there are two
19 questions I have to resolve. The first is: Is the Court able
20 to, am I able to impose a sentence different than 156 months,
21 given that that was the sentence that I said I was going to
22 give? And then the next question -- if the answer to the
23 first question is yes, I am able to give a different sentence,
24 the question is: Should I?

25 And I was going to address both of those questions.

1 Obviously, the first is logically anterior to the second. But
2 before I -- before I do that, I probably should turn the mic
3 over to Mr. Walsh to see if he has anything that he would like
4 to say in addition to what he has already said in October and
5 earlier this morning.

6 THE DEFENDANT: I'd like to say that any outburst
7 that I made like that, it was just like spontaneous
8 combustion. You know? It was something that was not really
9 thought out. It wasn't planned. I didn't do it
10 intentionally. It just happened.

11 And I don't know you. You don't really know me.
12 You know? You know me by a record, but you don't really
13 know me. I don't really know you.

14 I don't -- I wouldn't have sought to do anything, I
15 wouldn't have said anything had -- from my understanding,
16 123 months -- okay. There was two points. It went to
17 138 months. If I had got the other point from you, it would
18 have been 123 months, according to the plea. That's what I
19 was thinking.

20 You didn't allude to any of that. You never alluded
21 to that. You never -- you get what I'm saying? So, I'm
22 thinking, "Now where's he going?" Then you throw in an upward
23 departure, and you're taking stuff that's well older and
24 should have no bearing on what's going on at this time.

25 You seem to think it does. I understand your

1 reasoning. Looking at my record, I -- and I went over it.
2 I've looked at it. I could see your assessment of my record
3 and the fact that I've been back and forth through this entire
4 system too many times.

5 I'm trying to plead with you to get a sentence much
6 less than 156 months, seriously. I -- 123 months, which is
7 what I would have gotten without anything, if you'd have gave
8 me that point and said, "Well, listen, according to the
9 Guidelines, I'm going to sentence you to 123 months," I
10 wouldn't have made no protest.

11 If you would have said, "I'm not going to give you
12 that point, but I'm going to give you 138 months according to
13 the plea," I would have said not -- nothing. You understand?
14 I would have said nothing.

15 But when you went to use something that you're going
16 to take off anyway, namely the attempted bank robbery, it's
17 coming off the sentence. Why would you use those points
18 against me and then under that other statute go for an upward
19 departure?

20 Now, to me, it seemed like that was the original plea
21 that was offered to me on the first time go-around. It had
22 156 months or something like that, 13 years, on the original
23 first plea that was offered. I turned that down. I didn't
24 turn down the 123 months and the fact that I could appeal
25 the 924(c).

1 I wouldn't have had anything to say, but you went
2 with an upward departure, and you upped my category to a IV.
3 To me, it just -- it just made -- it unhinged me from there.
4 My thoughts just went absolutely crazy from there.

5 And then when you were going to give the
6 justification for the high end, I just -- I threw the verbal
7 bag of shit in your face is what I did. I realize that.
8 (Audio breaks up) -- had no -- there was feelings there.
9 It was feelings -- my hurt, my pain, that I did what I did.
10 You know? Should I be punished for it? I don't know.

11 I'm thinking that you're in a position you can do
12 what you want to do with my sentence. If you feel I should
13 get whatever I'm going to get, that's your feelings. I
14 can't -- I'm trying to influence you to give me something
15 under the Guidelines so that I can get out and do something
16 right. You know? I'm not trying to stay in prison the rest
17 of my life.

18 I'm 74 years old. Nobody knows how long they're
19 going to live. I don't know how old you are, but, hey, nobody
20 lives forever. People die. I don't need to die in prison or
21 over this thing that I never intended to hurt anybody with.

22 Yeah, my background's bad. Yeah, I did what I did
23 with that police officer. There was a lot of other things
24 that were involved with that that you don't know anything
25 about. I don't really want to get off into that. That was

1 something that was 52 years old or better back.

2 Was it justified? No, it probably wasn't justified.
3 Did I pay for it? Yes, I paid for it. Did I pay for the
4 other thing when they tried to kill me with time? Yeah, I
5 paid dearly for that.

6 I was out of focus when I came out after -- if you
7 do that much time, you're going to be out of focus. Trust me.
8 Doing more time is -- I don't know. All I'm trying to do is
9 say that I'm not going to -- I'm not going to do anything like
10 that. If I get the vocational training, I'm going to stay
11 clear of the law, period. I don't want to be coming back in.

12 I get out at a reasonable time, I'm going to try to
13 do the best that I can do. That's all I can do. That's all
14 I can say. I'm going to try to do the best that I can, the
15 best of my ability. That's all I can do.

16 Like I say, I apologize for that. I was in a bad
17 frame of mind. I was looking at those other two cases that --
18 and I realized later that, yeah, those two cases you went
19 under the Guidelines, but their criminal history is not my
20 criminal history. That was them. That's not me. And I could
21 understand your justification by law to do that.

22 Now, it's not going to make any difference to anybody
23 else out there listening or anything else if I got five years
24 or 50 years. It's not going to make any difference to anybody
25 else but me. Yeah, you've got a -- how would you say, it's

1 almost like a procedure to look out for the welfare of the
2 public. I understand this. And I understand that you can
3 be justified and give me whatever sentence you wish to give
4 me, period.

5 I'm saying that I would like to get a second chance
6 on this one. You know? I'm a little bit older now, and I
7 just don't want to be dying in prison over something that
8 shouldn't be an offense to die over. Okay? I don't believe
9 that dying in prison is going to benefit anybody else. It's
10 going to kill me, but it's not going to benefit anybody else.

11 Now, if I was really that far out of control, I
12 wouldn't have had control ever since then. I made the
13 emotional outburst, sure, because I was super upset because
14 you were giving me something well beyond the Guidelines, and
15 it wasn't what I pled to. You know?

16 If you sign -- 95 percent of the people, when they
17 sign a plea, they get usually what they're -- they're at, or
18 they get below the Guidelines a little bit, a little leeway
19 for accepting responsibility, that whole nine yard thing.

20 With my background, I could see the justification and
21 almost the necessity for you to impose the sentence that you
22 did. What I'm trying to do is to get you to impose a sentence
23 that's far less than that, and -- because I am as old as I am,
24 and I'm not truly trying to die in prison. Okay? Not over
25 that.

1 If I had done really some other bad thing and took
2 hostages or really, you know, did something crazy, I'd
3 understand it. I wouldn't have said anything -- or I wouldn't
4 say because saying anything, that would really tip the balance
5 one way or another. I'm just trying to live like a normal
6 human being. That's all. That's all I was trying to do.

7 I know I stepped off the mark, but I can step right
8 back on the mark if I get the proper training. If I get an
9 over amount of time, I could die in prison. What's that going
10 to serve? That's going to serve, well, hey, you killed this
11 guy with time. That's what that's going to serve. It's not
12 going to serve any real justice at all.

13 If you're looking at even-handed justice, as opposed
14 to something that -- you know, you could -- yeah, certainly,
15 you can do that. You can do -- under that -- under the
16 Guidelines and under whatever you wish, you can impose
17 whatever sentence you wish to impose. I have no control over
18 that. I'm just trying to plead that you give me a less
19 sentence than 156 months. That's what I'm trying to plead,
20 something that's -- that I can do -- that I can get out, a
21 good chance.

22 60 months would have done that. If you were -- would
23 have came with the 10 years, we could have tried to argue down
24 to getting the five years, so that -- 60 months is blown up.
25 I've got 30 months in now. In 30 months' time, I can obtain

1 the vocational training that I need to get, and I can get a
2 livable wage out there, and I don't have to be coming back
3 to this again.

4 If I had a livable wage out there, I wouldn't have
5 been back here after 30-some years. Believe me. I was trying
6 to do the best I could, and I failed; but I realize my failure
7 is not getting the vocational training.

8 I did try to take -- I took two job readiness courses
9 when I was out of work. One was for a truck driver -- not
10 truck driver, but a forklift driver, and the other was for a
11 porter. Okay? Now, I received certificates for those that I
12 never made any mention about. Okay?

13 The one, they didn't tell me anything about anything.
14 I had to go 16 weeks, that's four months, with no pay to
15 learn -- to be a forklift driver. That would have only got
16 me 14, \$15 an hour more -- I mean, 14, \$15. It would have
17 been a couple of dollars more than I was making.

18 I put in another job readiness course somewhere else
19 for a janitor's job. Again, 16 weeks course. I couldn't do
20 it. I had to keep working to keep the rent and keep
21 everything else up.

22 Yeah, I was getting Social Security, but they cut
23 payments. They cut payments if you're working under that --
24 under that -- under that guidelines that they've got for
25 Social Security, if you get disability from mental or you've

1 been locked up a long time.

2 They took my Link card. From 192, they put it down
3 to \$15 a month because I was working. This is like a month or
4 so, almost two months after I was out. They cut that because
5 I was working. They got a computer company, I guess, and
6 they -- they looked at it, and they said, "Well, we're cutting
7 this."

8 They take the 750, and they cut \$75 off of it to
9 where I'm getting 675. Now I get another notice that says
10 that they're going to cut another 75 over a certain amount,
11 and I made over that certain amount, and they were going to
12 cut another \$75. Now you're starting to see where I'm coming
13 from. It just all piled up on me all at one time, and I lost
14 it. I lost it.

15 But I didn't want to hurt anyone. You can see that
16 by the fact -- if you look at the video, you see how fast I
17 moved. I just wanted them to see that the gun was there.
18 That's it. I didn't wish to hurt anybody.

19 Yeah, I said, "I'm not playing," because she laid
20 there and closed the drawer on me. If you look at the bank
21 robbery and look at clip 5, you'll see that from their point
22 of view, she closed the drawer on me. First I asked for the
23 money. She closed the drawer and looked at me. Yeah, I
24 pulled the gun up and did that and said, "I'm not playing."
25 She said, "Okay. I'll get the money for you."

1 When I leave, also, the other woman that was in
2 question, when I first came in under clip 5, she's on the
3 phone. She never gets off the phone. She's not alarmed.
4 She had me go down to the other tellers. I go down to the
5 other two tellers. One of them thinks that the gun is not
6 real. Okay. Regardless of that, after I leave, if you're
7 looking at the thing, they're laughing about it because
8 people -- you know, they --

9 MR. VEATCH: Your Honor, this is the government.
10 The government respectfully objects at this point. None of
11 this is going to the Court's initial question.

12 THE COURT: Yeah. I'm going to -- this is
13 actually -- because there have been changed circumstances,
14 I wanted to give Mr. Walsh a chance to give a further
15 allocution; and so he doesn't really need to confine his
16 remarks to answering the two questions that I had. This is
17 not legal argument. Mr. Boyle already presented legal
18 argument. This is further allocution in light of what
19 happened towards the tail end of the October 6th hearing.

20 Go ahead, Mr. Walsh.

21 THE DEFENDANT: Is there any way that you could see
22 clear to give me a much lighter sentence than 156 months?
23 That's what I would like to ask, in reality. I'm 74 years
24 old. You know all the circumstances of everything because
25 I've put it in front of you.

1 If that fact of that picture would have went in front
2 of a jury, they would not have been able to determine that
3 there were any bullets in the gun, period, from that picture.
4 It would have given reasonable doubt to the 924(c), period.
5 But I can't do anything with the 924(c). I can't do anything
6 with anything. It's all been covered legally.

7 All I can do is try to plead my case to say that my
8 age and the fact that -- the fact that I'm just -- you know,
9 I just want a chance, that's all, at life. I don't want to
10 die in prison because of my background.

11 You know, I mean -- what can I say? You know? Yeah,
12 you're within legal rights to do all that you said you could
13 do. You know? And I have not got -- well, I haven't got
14 anything that I can say against that. You know? Nothing.

15 So, whatever you're going to do, you'll do, and
16 that's it. I have nothing further to say.

17 THE COURT: All right. Thank you. Anything further
18 from Probation?

19 MR. CHRISTIANSEN: No, Judge, unless there are any
20 specific questions that you have for me.

21 THE COURT: Okay. Anything further from the
22 government?

23 MR. VEATCH: Your Honor, I guess the question, as
24 your Honor posed it, is whether you now have the authority to
25 impose a different sentence; and I think much of that hinges

1 on whether -- certainly, you could have after the October 6th
2 hearing, as the sentencing was still in motion. You were
3 still receiving argument on issues.

4 I think the greater issue now becomes whether, in
5 your Honor's recitation of the conditions of a sentence that
6 you would have imposed is the question of whether that was
7 your -- the Court, in fact, imposing a sentence in that moment
8 and now after the fact seeing whether the imposed sentence
9 needs to be modified.

10 If the Court was merely indicating its intention of
11 what it anticipated imposing, I think arguably, that's a
12 different story. But to the extent that the Court has already
13 imposed a sentence, now that it has gone through all the
14 factors, the motions, the forfeiture motions, the conditions,
15 if the Court views that as having imposed the sentence, I
16 believe we are past that; and now, you know, modification
17 would have to be under Rule 35 for clear error. I think much
18 of it hinges on the Court's intent in relaying the terms of a
19 sentence.

20 THE COURT: Mr. Boyle?

21 MR. BOYLE: Yes, Judge. I think I have a similar
22 analysis. I've been looking at Rule 32. I think you have --
23 you essentially imposed the sentence back in October. You
24 have re-articulated the same sentence and have re-articulated
25 your reasoning and the reasons why you're imposing that

1 156-month statement -- sentence.

2 So, I think there were, I guess, various approaches
3 or things that could have been done in response to Mr. Walsh's
4 statements back in October, but I don't think those steps were
5 taken. I think -- I think both parties looked at the idea as
6 if you could somehow use that as a possible enhancement.

7 The government today has suggested that possibly
8 under Section 3C1.1, an enhancement to the offense level could
9 be imposed; but again, even if you were to do that, a
10 156-month motion is already within that range.

11 And again, what Mr. Walsh has said in subsequent
12 court appearances and what he has just stated again today,
13 it's just -- he was -- had great hopes for a lower sentence;
14 and apparently, again, your Honor apparently imposed --
15 essentially sentenced him to 156 months back in October, and
16 now we've just kind of -- I think certain things have changed
17 that were in Mr. Walsh's favor, such as the amendments and
18 corrections to the Presentence Investigation Report.

19 And for the first time in my career, I filed a
20 sentencing memorandum where I asked for a higher sentence
21 than I did in the original pleading, and I think that also
22 suggests that Mr. Walsh has come a bit down the road as far
23 as understanding the seriousness of his criminal history and
24 the reasons why what we originally asked for was the 60-month
25 sentence and one day served, we have now come back and we're

1 asking for a 96-month sentence, which for various reasons,
2 your Honor is not prepared to impose.

3 Instead, you've stated you plan on imposing the
4 sentence of 156 months, and I think that is where you
5 should -- we're objecting to that sentence, obviously, and I
6 anticipate Mr. Walsh will want to appeal that sentence; but I
7 think -- I think it encompasses all of the things that you
8 have carefully considered, and that's why you're imposing
9 that sentence. And I don't think Mr. Walsh's outburst back
10 in October should change that, or perhaps can't change that.
11 I think the sentence has been imposed.

12 THE COURT: Okay. Thank you.

13 MR. CHRISTIANSEN: Your Honor, this is Probation
14 again. I feel I need to clarify for myself and for Probation
15 a little bit more. May I do that, sir?

16 THE COURT: Of course.

17 MR. CHRISTIANSEN: Okay. I guess from the standpoint
18 of the application of the Sentencing Guidelines, the Probation
19 Office, the way we're trained to sort of approach things is to
20 use the relevant conduct analysis, and the most simple way in
21 looking at it vis-a-vis my approach is that we look at conduct
22 that occurs in preparation for an offense of conviction, net
23 conduct that obviously spans the offense itself, and then any
24 attempts by a defendant to avoid responsibility for their
25 conduct.

1 I guess the way that I view this situation, at least
2 in terms of whether or not there's propriety in the realm of
3 adjusting his offense level based on his statements during
4 that supplemental allocution is that I can only imagine what
5 he was thinking at the moment, but it's almost as though the
6 penalty has been imposed, at least in his mind. So, he wasn't
7 avoiding responsibility for anything at that point because the
8 penalty had already been imposed.

9 I can't know for sure exactly what he was thinking
10 when he was saying the things that he was saying, but that is
11 my rationale in suggesting that the Court may not be required
12 to revisit the offense level computations or to revisit issues
13 pertaining to variances or departures. That's the reason for
14 my saying that I think the Court is in the unique position to
15 assess the propriety of those types of adjustments.

16 I hope that makes it -- things a little bit more
17 clear.

18 THE COURT: I understand what you're saying.

19 That was kind of directed towards the government's
20 argument, so I don't know if the government has anything in
21 addition that it would like to say. You don't have to, but
22 if you would like to, go ahead.

23 MR. VEATCH: Certainly, your Honor. And I agree with
24 Probation's sentiments -- I should say Probation certainly
25 raises a very interesting way of looking at the statements.

1 We would just disagree that sentence was imposed during the
2 October 6 proceeding.

3 THE COURT: Right. The first question is whether
4 the 156 months that I articulated, but did not fully justify
5 at the October 6th hearing, and what I did at the beginning
6 of today's hearing is I said what I was going to say at the
7 October 6th hearing, with a couple of adjustments, the
8 adjustments being to what the armed robbery was in
9 paragraph 55 and whether or not that would impact the upward
10 departure from category III to category IV, and then whether
11 or not the gun was loaded in the first robbery.

12 So, the question is: Having uttered the words
13 "156 months," is that it? Is that something that is set in
14 stone?

15 The answer to that question is no, at least in my
16 view. Criminal Rule 35(c) refers to the oral announcement of
17 the sentence, and the Seventh Circuit has held that the oral
18 announcement of a sentence means that all components of a
19 sentence must be stated in the oral sentence. And that's
20 *United States versus McMillan*, 777 F.3d 444 at 451.

21 That obviously didn't happen on October 6th. I
22 didn't -- well first, I didn't fully -- I didn't give my
23 complete justification for the 156 months; but even more than
24 that, I didn't say anything about supervised release, about a
25 fine, about the forfeiture. So, I didn't come close to giving

1 all components of a complete sentence. And I recognize that
2 at page 47, lines 20 through 24 of the October 6th transcript.

3 Just moving on, in *United States versus Cheatham*,
4 527 Fed. App. 556 at 557, the Seventh Circuit stated that a
5 district court may spread out the sentencing process over more
6 than one date. And *Cheatham* didn't address the particular
7 situation that I'm facing right now, that we're facing right
8 now; but the *Cheatham* unpublished decision does cite a Tenth
9 Circuit decision that does speak to our circumstances.

10 It's *United States versus Luna-Acosta*, 715 F.3d 860,
11 where the Seventh Circuit -- I'm sorry, where the district
12 court imposed one sentence, and then -- custodial sentence,
13 and then imposed a different sentence. And the -- and then
14 got cold feet, and the district court went back to the
15 original sentence on the ground that the district court was
16 stuck with the originally articulated sentence.

17 And the Tenth Circuit held that that was not the
18 case, that the district court could have, over the course of
19 the sentencing hearing, imposed what the district court had
20 articulated in the second sentence. And the Tenth Circuit
21 explained that Rule 35(c) defines sentencing as the oral
22 announcement of the sentence, and that nothing in the rule
23 requires or suggests that whatever term or terms of
24 imprisonment the district court first utters during a hearing
25 is to be treated as the sentence for purposes of the rule.

1 And that's at page 865.

2 And then the Tenth Circuit held that despite the
3 continuance in the hearing, the sentence was not final until
4 the end of what the district court -- until the end of the
5 second hearing that the district court conducted. And the
6 Tenth Circuit said, which is very pertinent here, "Most
7 important is the very fact that the district court continued
8 the first hearing without finalizing all the terms of the
9 sentence."

10 The Tenth Circuit cited with approval the Fifth
11 Circuit's decision in *United States versus Gerezano-Rosales*,
12 which is 692 F.3d 393. In that case, the district court
13 announced a sentence of 71 months. The defendant made
14 remarks that were much milder than Mr. Walsh's remarks on
15 October 6th, and then the district court said, "Okay. I'm
16 going to give you a 108-month sentence."

17 And the Fifth Circuit affirmed the 108-month
18 sentence, reasoning that the district court's initial oral
19 announcement of the defendant's sentence did not constitute a
20 binding sentence and, therefore, did not strip the court of
21 its ability to change the initial formulation and that the
22 court changed its initial formulation before it adjourned the
23 sentencing hearing. And that's the situation we have here.

24 And the Tenth Circuit, in *Luna-Acosta*, also cited a
25 First Circuit case, *United States versus Burgos-Andujar*,

1 275 F.3d 23 at 30 to 31, which presented a very similar
2 situation to the Fifth Circuit circumstances in
3 *Gerezano-Rosa1es* and to the circumstances we face here, where
4 the sentencing judge initially said 40 days, the defendant
5 interrupted and made inadvisable comments to the court, and
6 then the court raised the sentence to 60 days.

7 And the First Circuit said the sentencing judge was
8 fully justified in considering the defendant's full
9 allocution, which included her comments during the second part
10 of the allocution. And because of the way the hearing
11 developed, the 40-day sentence was functionally a tentative
12 sentence.

13 And to the same effect is *United States versus Ochoa*,
14 809 F.3d, 453 at 458, which is the Ninth Circuit.

15 So, that's our situation here, and Mr. Walsh's
16 remarks towards the end of the October 6th hearing was a
17 continued allocution under Rule 32.1(4)(A)(ii). So, it is
18 within my discretion under the rules to impose a sentence
19 different than the 156-month sentence that I initially
20 articulated.

21 As to whether I will do so, we've been going for
22 two hours right now. There's been a lot said during this
23 hearing. And in fairness to Mr. Walsh, and in fairness to
24 the government, and in fairness to the public, and in the
25 interests of justice, I need to reflect on what was said,

1 rather than simply process it on the fly and decide right now.

2 And the last thing I wanted to do coming in to this
3 sentencing hearing was to continue the hearing once again
4 because we've been with each other a lot and it's time to
5 bring this matter to a close; but I think I would be doing a
6 disservice to Mr. Walsh, to the government, to the interests
7 of justice if I didn't take time to reflect on everything
8 that was said during this hearing. And I don't have the
9 opportunity to do so on the fly.

10 So, Jackie, I don't know if we can propose a time
11 next week when we can get together, or the week after.

12 First let me ask the lawyers, are there any dates
13 over the next two weeks that you're not available?

14 You're on mute.

15 MR. VEATCH: Not from the government, your Honor.
16 Thank you.

17 MR. BOYLE: Judge, I have something virtually every
18 morning, but I can usually make a little bit later in the day
19 work on every day. I do have a continued evidentiary hearing
20 on the 22nd before Judge Lee, so I'd prefer not that day.

21 THE CLERK: I'll look at our calendar.

22 THE COURT: Yeah, Jackie, I could do it any afternoon
23 other than the late afternoon on the Thursday of next week and
24 of the following week.

25 THE CLERK: Okay. How about January 20th at

1 1:00 p.m.?

2 MR. BOYLE: That works for the defendant.

3 MR. VEATCH: Works for the government, your Honor.

4 THE COURT: All right. Then we'll get back together
5 on January 20th. And I want to thank counsel for your -- and
6 the Probation Office for all of your arguments and input on
7 these difficult matters.

8 MR. BOYLE: And, Judge --

9 MR. VEATCH: Your Honor --

10 MR. BOYLE: -- can I just ask for a little clarity?
11 I mean, you've already determined that you can -- you're not
12 saying you will, but that you could impose a greater sentence
13 based upon Mr. Walsh's statements. Is there anything else we
14 should be thinking about?

15 THE COURT: No. I'll certainly -- if you have more
16 to say on whether I should, I'm happy to hear you out on the
17 20th.

18 MR. BOYLE: Okay. I mean, that would be over our
19 objection, and we will revisit that, I suppose, when we
20 reconvene.

21 THE COURT: Yeah. And you're not -- if you do make
22 arguments on that point, you're not waiving your position that
23 I'm stuck with the 156-month sentence.

24 MR. BOYLE: Thank you, Judge.

25 MR. VEATCH: Your Honor, on behalf of the government,

1 I should have made clear, certainly, I was telling the Court
2 what the range would be if the acceptance -- I'm sorry, if the
3 obstruction came in. The government's position is that it
4 should be increased to that high end of whatever the Guideline
5 range would be with the obstruction enhancement, or as of
6 right now preliminarily, 175.

7 THE COURT: Right.

8 MR. VEATCH: I just wanted to make clear that that
9 was on the record, your Honor.

10 THE COURT: I understand.

11 MR. CHRISTIANSEN: And, your Honor, is there anything
12 that you require from the Probation Office at present?

13 THE COURT: No.

14 THE DEFENDANT: Could I say something, just --

15 THE COURT: Again, I'd advise you not to. I'm not
16 going to stop you.

17 MR. BOYLE: Mr. Walsh --

18 THE DEFENDANT: Okay.

19 MR. BOYLE: Mr. Walsh, if you have anything you want
20 to say to me, I will request a legal call as soon as we hang
21 up.

22 THE DEFENDANT: Okay.

23 MR. BOYLE: I think you've been heard today; and we
24 will confer, and we'll get prepared for the next hearing.

25 THE DEFENDANT: The thing that's happened, what I'm

1 trying to do is -- remember, I had just had that information
2 from two --

3 MR. BOYLE: Mr. Walsh, we can address that together
4 on a legal call, and if you provide me with that
5 documentation, I can submit it to the Court.

6 THE DEFENDANT: All right.

7 MR. BOYLE: Thank you.

8 THE COURT: All right. Thank you.

9 MR. BOYLE: Thank you, everyone.

10 MR. VEATCH: Thank you.

11 THE DEFENDANT: Thank you.

12 (Which were all the proceedings heard.)

13 CERTIFICATE

14 I certify that the foregoing is a correct transcript from
15 the record of proceedings in the above-entitled matter.

16
17 */s/Charles R. Zandi*

February 5, 2021

18 _____
19 Charles R. Zandi
20 Official Court Reporter

Date